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3 \*E-FILED 7/15/08\*  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

9 CHARLES W. O'BRYAN JR.,

NO. C 08-3367 RS

10 Plaintiff,

11 v.

12 RODEO EXPRESS CHARTERS, et al.,

13 Defendants.  
14 /  
15 **ORDER GRANTING  
APPLICATION TO PROCEED IN  
FORMA PAUPERIS AND  
REASSIGNING ACTION WITH  
RECOMMENDATION THAT  
THE ACTION BE DISMISSED  
WITH LEAVE TO AMEND FOR  
FAILURE TO STATE A CLAIM**

16 Plaintiff Charles O'Bryan Jr. lodged a complaint alleging that defendants Rodeo Express  
17 Charters, et al., were negligent for letting a passenger ride in the front seat of a vehicle and assigning  
18 O'Bryan a faulty piece of equipment. His complaint also contains language for possible claims of  
19 harassment, discrimination, and emotional distress. On July 11, 2008, he filed an application to  
proceed *in forma pauperis* ("IFP").

20 Pursuant to 28 U.S.C. § 1915(a)(1), the court may authorize the commencement of an action  
21 "without prepayment of fees" by a person who submits an affidavit of poverty indicating that the  
22 affiant is "unable to pay such fees." O'Bryan's supporting declaration establishes his inability to pay  
23 filing fees. However, pursuant to the statute authorizing IFP proceedings, 28 U.S.C. § 1915(e)(2),  
24 "the court . . . shall dismiss the case at any time if the court determines that . . . the action . . . is  
25 frivolous or malicious . . . [or] fails to state a claim on which relief may be granted . . ." O'Bryan  
26 states no legitimate federal claim or basis for federal jurisdiction. Nevertheless, absent consent of  
27 the parties, a magistrate judge may not make dispositive rulings. 28 U.S.C. § 636. This case must,  
28 therefore, be reassigned to an Article III Judge, with the recommendation that this action be

1 dismissed for failure to state a claim on which relief may be granted. O'Bryan is forewarned that any  
2 amended complaint must comply with Rule 8(a) of the Federal Rules of Civil Procedure, which  
3 provides in relevant part, that a complaint must contain "a short and plain statement of the claim  
4 showing that the pleader is entitled to relief."

5 Based upon the reasoning above, it is hereby ORDERED that:

6 (1) plaintiff's application to proceed *in forma pauperis* is GRANTED;  
7 (2) this matter shall be returned to the clerk of court for reassignment, with the  
8 recommendation that it be dismissed with leave to amend for failure to state a claim.

9  
10 Dated: July 15, 2008



RICHARD SEEBORG  
United States Magistrate Judge

1 **THIS IS TO CERTIFY THAT A COPY OF THIS ORDER WAS MAILED TO:**

2 Charles W O'Bryan, Jr  
1275 Ashcroft Lane  
3 San Jose, CA 95118

4 Dated: July 15, 2008  
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7 /s/ BAK  
Chambers of Magistrate Judge Richard Seeborg  
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